

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TV INTERACTIVE DATA
CORPORATION,

Plaintiff,

v.

SONY CORPORATION, et al.,

Defendants.

Case No. [10-cv-00475-JCS](#)

ORDER RE MOTIONS IN LIMINE

**Dkt. Nos. 584, 586, 588, 590, 592, 594-95,
597, 599, 602, 604, 606, 608, 610.**

For the reasons stated on the record and good cause appearing, the Court orders as follows:

- (1) TVI's Motion in Limine No. 1 is DENIED. Sony's evidence of Microsoft and Apple source code will be admitted under Rule 803(6) as properly authenticated by the corresponding Rule 902(11) declarations.
- (2) TVI's Motion in Limine No. 2 is DENIED. Sony's in house counsel Mr. Siegel will be permitted to testify as to the reliance element of Sony's equitable estoppel defense.
- (3) TVI's Motion in Limine No. 3 is DENIED. Sony is permitted to present argument and evidence as to the § 102(g) defense based on Windows 95 and pre-release build versions.
- (4) TVI's Motion in Limine No. 4 is GRANTED in part and DENIED in part. Mr. Byrd is not permitted to testify that the "pressing any button" alternative does not infringe. That testimony improperly uses an interpretation of the term "automatically" which conflicts with the stipulated construction. Mr. Byrd may testify as to his opinion that the products-in-suit do not meet the "without rebooting" limitation.

- (5) Regarding TVI's Motion in Limine No. 5, the parties are ordered to submit simultaneous briefs—subject to the briefing requirements stated below—on the proper construction of the phrase “operatively coupled,” and in particular, whether the claims require two host devices.
- (6) TVI's Motion in Limine No. 6 is DENIED. Sony is permitted to present evidence of CDTV source code, a CDTV device and CDTV media tiles. Nevertheless, the Court offered to allow TVI to take an additional deposition of Sony expert Mr. Finkel regarding the CDTV source code produced at his deposition. TVI has declined this opportunity.
- (7) TVI's Motion in Limine No. 7 is DENIED. Sony is permitted to present evidence on the CD-I Green Book and VMDemo.
- (8) Sony's Motion in Limine No. 1 is GRANTED. The Court will exclude under Rule 403 any reference to TVI's license agreements entered into during litigation.
- (9) Sony's Motion in Limine No. 2 is DENIED. TVI is permitted to present evidence that the initialization file is present in the accused products.
- (10) Sony's Motion in Limine No. 3 is DENIED. TVI expert Dr. Wolfe is permitted to opine on the UNIX Internals book.
- (11) Sony's Motion in Limine No. 4 is GRANTED. The Court will exclude under Rule 403 any findings or comments by other courts in other cases regarding Sony's experts or their work.
- (12) Sony's Motion in Limine No. 5 is DENIED. The Court will permit TVI expert Dr. Wolfe to rebut the opinions in Mr. Byrd's reply expert report.
- (13) Sony's Motion in Limine No. 6 is DENIED. TVI expert Dr. Wolfe is permitted to testify on nonobviousness based on the failure of others.
- (14) Sony's Motion in Limine No. 7 is GRANTED. TVI is not permitted to present any evidence or arguments that TVI's patents were cited during the prosecution of Sony's patents.

The parties are hereby ordered to submit simultaneous briefs to be filed by 12:00 p.m. on

1 March 1, 2013, regarding the following issues:

- 2 (a) Not more than five pages on the question of whether Sony is permitted to present
3 evidence of its equitable defenses during the jury portion of the trial.
- 4 (b) Not more than five pages on the question of whether the term “operatively
5 coupled” requires two host devices.

6 Sony is ordered to submit a final reduced list of the prior art references it intends to use
7 during trial, to be filed by noon on March 1, 2013. If, in the Court’s judgment, Sony has not
8 sufficiently limited its prior art references, the Court will set a limit itself. In addition, Sony shall
9 notify the Court by noon on March 1, 2013 whether it will stipulate that one or more Sony entities
10 may be treated as one entity for purposes of the trial in this matter. The parties shall also file
11 revised joint jury instructions and verdict form by noon on March 1, 2013.

12 IT IS SO ORDERED.

13 Dated: February 25, 2013.

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16 Joseph C. Spero
United States Magistrate Judge
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